IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6987 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHASHIKANT CHIMANLAL MAVAL & ANR.

Versus

SHAH ALKESHKUMAR AMBALAL & ORS.

Appearance:

1. Special Civil Application No. 6987 of 2005

MR. T.S. NANAVATI for Petitioner Nos. 1-2

MR. YOGESH S. LAKHANI for Respondent Nos. 1, 2 & 4

MR. A.J.PATEL for Respondent No. 3

MS. D.S. PANDIT, AGP for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/05/2005

ORAL JUDGEMENT

1. Rule.

Mr.A.M.Dagli and Mr.A.J.Patel, learned Advocates, and Ms.D.S.Pandit, learned AGP, appear and waive service

of Rule on behalf of respondent nos.1, 2 and 4, respondent no.3 and respondent no.5 respectively.

2. By way of this petition, the petitioners have challenged the order dated 1st November, 2003 passed by the learned Joint Civil Judge (J.D.) below Exh.5 in Civil Suit No.84 of 2003, which is confirmed by the learned District Judge and Fast Track Court No.6 vide order dated 6th November, 2004 passed in Miscellaneous Civil Appeal No.89 of 2003.

3. Heard the learned Advocates for the parties and perused the relevant documents on record. In view of the statement made by the petitioner in paragraph-3, this Court is of the view that no prejudice will be caused, if, without going into the merits of the case, the matter is remanded to the Appellate Court for deciding it afresh on merits. In that view of the matter, the impugned judgement and order passed by the Appellate Court is quashed and set aside. The matter is remanded to the Appellate Court with a direction to hear the same afresh on merits. It is made clear that this Court has not gone into the merits of the case and has quashed and set aside the order of the Appellate Court only in view of the fact that the averments made in paragraph-3 are not desirable for any judicial officer. Rule is made absolute to the aforesaid extent only.

Direct Service is permitted.

[K.S.Jhaveri, J.]

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